

Message Text

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ACTION OPIC-12

INFO OCT-01 ARA-11 ADP-00 AID-20 CIAE-00 COME-00 EB-11

FRB-02 INR-10 NSAE-00 TRSE-00 XMB-07 CIEP-02 LAB-06

SIL-01 SAL-01 OMB-01 IO-12 L-03 /100 W
----- 002280

R 052140 Z APR 73

FM AMEMBASSY CARACAS
TO SECSTATE WASHDC 9362

LIMITED OFFICIAL USE SECTION 1 OF 2 CARACAS 2938/1

EO 11652 : N/ A

TAGS: EFIN

SUBJECT: ARRANGEMENT FOR CONTINUING OPIC PROGRAMS IN VENEZUELA
FOR OPIC

REF: A. STATE 57049 B. CARACAS 2753

SUMMARY. FOR REASONS DISCUSSED BELOW, EMBASSY DOES NOT BELIEVE DRAFT NOTE, REF A, WOULD BE ACCEPTABLE TO GOVERNMENT OF VENEZUELA NOR WOULD IT ADEQUATELY COVER UNITED STATES INTERESTS. NEVERTHELESS, THE EMBASSY IS PREPARED TO DISCUSS OPIC PROGRAM WITH APPROPRIATE VENEZUELAN OFFICIAL WITH A VIEW TOWARD ACHIEVING VIABLE MODUS OPERANDUM.

END SUMMARY

1. PER REF B, EMBOFFS DISCUSSED OPIC PROGRAM WITH CARLOS GUILLERMO CORDIDO VALERY, DIRECTOR OF INDUSTRIES, MINISTRY OF DEVELOPMENT, WHICH OFFICE IS IN CHARGE OF COORDINATING GOVERNMENT APPROVAL OPIC INVESTMENT GUARANTIES. CORDIDO MADE CLEAR HIS OFFICE'S VIEWS ON GUARANTEES FOR FOREIGN INVESTMENT NON- ESSENTIAL PART OF VENEZUELAN ECONOMIC DEVELOPMENT PROGRAM AND BASICALLY A MATTER OF CONCERN PRIMARILY TO FOREIGN INVESTOR, EXTERNAL TO HIS OFFICE. HE DOWNPLAYED NEED FOR INSURANCE BY FOREIGN INVESTORS
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AGAINST EXPROPRIATION AND NON- CONVERTIBILITY AND DID NOT SEEM TO RECOGNIZE SUCH INSURANCE ENCOURAGED FOREIGN INVESTMENT BASIC TO THIS COUNTRY' S DEVELOPMENT. HE WAS CLEARLY NOT PREPARED TO LEND SUPPORT TO EFFORT TO ESTABLISH FORMAL MECHANISM FOR SETTLEMENT OF INVESTMENT INSURANCE DISPUTES.

2. WHILE EMBASSY INTENDS TO PURSUE MATTER IN GENERAL WITH OTHER RELEVANT GOVERNMENT OFFICIALS, IT IS NOT TOO EARLY TO INDICATE THAT, GIVE THE REACTION ABOVE OF OFFICE MOST DIRECTLY CONCERNED WITH OPIC PROGRAM. PROSPECTS DO NOT LOOK BRIGHT FOR OBTAINING AGREEMENT FOR DRAFT NOTE REF A.

3. AS REQUESTED REF A, THERE FOLLOWS EMBASSY' S REACTION TO FEASIBILITY OF SUGGESTED NOTE: WHILE EXCHANGE OF NOTES WOULD OBIATE NEED FOR CONGRESSIONAL RATIFICATION IT IS UNLIKELY THAT IT COULD OCCUR WITHOUT PUBLIC NOTICE. SINCE IT INVOLVES THE VERY SENSITIVE ISSUE OF FOREIGN INVESTMENT, IT IS UNLIKELY GOVERNMENT UNDER BEST OF INTENTIONS WOULD WISH TO CONSIDER IT UNTIL AFTER PRESIDENTIAL ELECTION IN DECEMBER.

4. IN ORDER TO AVOID CONGRESSIONAL RATIFICATION, NOT IS DESIGNED AS AMENDMENT OR PROTOCOL TO " 1962 AGREEMENT." IN FACT WHAT TOOK PLACE IN 1962 WAS MERELY AN EXCHANGE OF NOTES WHICH PROVIDED ONLY FOR 1) CONSULTATION ABOUT INVESTMENT GUARANTIES IF REQUESTED BY EITHER GOVERNMENT, AND 2) VENEZUELAN APPROVAL FOR ANY INVESTMENT GUARANTEED BY THE UNITED STATES. IT MADE NO PROVISIONS RELATING TO INVESTMENT GUARANTY PROCEDURES AND RIGHTS AND THEREFORE SEEMS TO BE A WEAK DOCUMENT ON WHICH TO BASE A PROTOCOL OR AMENDMENT.

5. PROVISION FOR INTERNATIONAL CONCILIATION UNDER ESTABLISHED PROCEDURES OF INTER- AMERICAN CONCILIATION CONVENTION IS NOT LIKELY TO MOLLIFY VENEZUELAN CONCERN FOR PRINCIPLES OF CALVO DOCTRINE, NOR BE CONSISTENT WITH ARTICLE 51 OF DECISION 24 OF AGREEMENT OF CARTAGENA. ON SURFACE IT APPEARS THAT ASSIGNMENT OR SUBROGATION LIMITED OFFICIAL USE

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OF INVESTOR RIGHTS TO OPIC WOULD BE IN VIOLATION OF ARTICLE

51, NOTWITHSTANDING 1962 EXCHANGE OF NOTES . EVEN IF PERMITTED, SUBROGATION OF RIGHTS WOULD BE SO COMPLICATED BY FACT THAT, BECAUSE OF ANDEAN PACT, ALL NEW INVESTMENT EVENTUALLY WOULD HAVE MAJORITY IN LOCAL, PARTICIPATION.

6 IN THE EVENT OF EXPROPRIATION THE GOVERNMENT IS UNLIKELY TO SUBMIT TO ARBITRATION EVEN IF CARRIED OUT UNDER THE JURISDICTION OF VENEZUELAN COURTS. OF THREE POSSIBILITIES FOR SETTLING DISPUTES DISCUSSED REF A, ONLY THAT OF INVESTOR RECOURSE TO VENEZUELA COURTS MAY BE ACCEPTABLE TO GOVERNMENT AND IN CASES OF EXPROPRIATION WOULD DEPEND ON GOVERNMENT'S WILLINGNESS TO BE SUED. THUS PROSPECTS ARE NOT FAVORABLE FOR OPIC RECOUPING LOSS IN EVENT CLAIMS MUST BE PAID TO INSURED INVESTOR.

7. EMBASSY WONDERES WHETHER OPIC EXPROPRIATION INSURANCE WOULD BE APPLICABLE IN ANY WAY TO DISINVESTMENT REQUIRED UNDER DECISION 24 IN VIEW OF FACT THAT FOREIGN INVESTOR MAY NOT BE ABLE TO OBTAIN WHAT HE CONSIDERS ADEQUATE COMPENSATION AT TIME HE FORCED TO PUT SHARES ON MARKET. ALSO COULD LIMITATION OF PROFIT REMITTANCE

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FM AMEMBASSY CARACAS

TO SECSTATE WASHDC 9363

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OF 14 PCT OF INVESTMENT BE CONSTRUED AS APPLICABLE TO NON-CONVERTIBILITY COVERAGE? IF NEITHER OF THESE CONTINGENCIES IS COVERED BY OPIC CONTRACTS, EMBASSY SUGGESTS THIS FACT BE EXPLICITLY STATED IN CONTRACTS ISSUED FOR INSURANCE IN ANDEAN PACT COUNTRIES.

8. IN LIGHT OF ABOVE, EMBASSY CONCLUDES THAT VENEZUELAN MEMBERSHIP IN ANDEAN PACT DOES NOT NECESSARILY INCREASE RISK OF EXPROPRIATION OR INCONVERTIBILITY. IN FACT IN CASE OF EXPROPRIATION RISK MAY BE LESS SINCE ALL NEW INVESTMENTS INVOLVE AN INCREASING PROPORTION OF LOCAL PARTICIPATION. HOWEVER, IF CONTINGENCIES FOR WHICH INSURANCE IS ISSUED DO OCCUR, PROSPECTS ARE NOT BRIGHT FOR OPIC OBTAINING RECOURSE FROM GOVERNMENT THROUGH AN ESTABLISHED PROCEDURE FOR SETTLEMENT OF DISPUTES.
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*** Current Classification *** LIMITED OFFICIAL USE

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